LIM KIEN HUAT v. HO SHEN LEE (M) SDN BHD (IN LIQUIDATION) & ORS

COURT OF APPEAL, PUTRAJAYA
MOHD RUZIMA GHAZALI JCA
AZHAHARI KAMAL RAMLI JCA
EVROL MARIETTE PETERS JCA
[CIVIL APPEAL NO: B-02(A)-1132-07-2024]
22 DECEMBER 2025

Abstract – *Professional misconduct under the Legal Profession Act 1976 requires proof of personal culpability. A partner in a legal firm cannot be found guilty of misconduct merely based on vicarious liability for the acts of another partner or staff member. While they may share civil liability arising from partnership principles, it would be unreasonable to equate such liability with disciplinary guilt.*

LEGAL PROFESSION: *Professional discipline – Misconduct – Appeal against decision of Disciplinary Board ('DB') – Partner of legal firm found to have committed professional misconduct due to act of legal associate – Whether High Court erred in upholding DB's decision – Whether appellate interference warranted – Whether personal culpability on part of partner ought to be proven – Applicable standard of proof for establishing professional misconduct – Whether beyond reasonable doubt*

The appellant was a practising advocate and solicitor and a partner in Messrs Lee & Lim ('L&L'). The first respondent was a private holding company, while the second and third respondents were the directors of the first respondent. Following the winding-up of the first respondent, Crowe Malaysia PLT was appointed as its liquidator ('liquidator'). In 2017, internal disputes arose within the first respondent between its directors, namely Lim Shen Lee ('LSL') who held 46% of the shares in the company, and the second respondent. After being excluded from the management of the first respondent, LSL filed a winding-up application against the first respondent. As a consequence, the first respondent's bank accounts were frozen. Following a failed bid for a variation order, the second and third respondents transferred the first respondent's assets elsewhere, which led to committal proceedings being initiated against them. The High Court subsequently ordered the winding up of the first respondent ('winding-up order'), the committal of the second and third respondents, and granted an interim stay of the winding-up order ('interim stay order'). On 23 April 2019, the appellant's legal assistant ('Ms Khor') emailed the winding-up order to the liquidator without reflecting the interim stay order. This was done despite the interim stay order only being formally approved and issued on 30 April 2019. This omission prompted the first complaint to be lodged with the

Disciplinary Board ('DB') against the appellant. L&L then wrote to the High Court alleging that the second and third respondents were dissipating the assets of the first respondent and consequently requested an expedited hearing of two pending applications. Despite a clarification letter from the second and third respondents, the appellant reaffirmed these allegations in a follow-up letter and refused to retract his position. This led to the second complaint being filed with the DB against the appellant. Subsequently, the Disciplinary Committee ('DC') found the appellant guilty in respect of both complaints and recommended that he be suspended from the Roll of Advocates and Solicitors for six months. The findings and recommendation were upheld by the DB. In addition to the suspension, the appellant was fined RM50,000. Dissatisfied with the DB's decision, the appellant appealed to the High Court. Upon the dismissal of the appeal, the appellant filed the present appeal. The principal issues that arose for determination were: (i) whether the High Court Judge ('HCJ') failed to appreciate the absence of the appellant's personal culpability in relation to the alleged misconduct; (ii) whether the HCJ failed to address the issue of breach of natural justice during the proceedings before the DC; and (iii) whether the HCJ failed to appreciate that the standard of proof applicable in the DC proceedings was beyond reasonable doubt.

Held (allowing appeal; setting aside High Court Order)
Per Evrol Mariette Peters JCA delivering the judgment of the court:

(1) The Federal Court case of *Datuk M Kayveas & Anor v. Bar Council* distinguished civil liability (as a firm owner or partner) from professional misconduct (which required personal culpability). While all partners might share civil liability, it would be unreasonable to hold every partner guilty of misconduct. The DC and DB erred by confusing these two forms of responsibility. Essentially, the vicarious liability of a partner for the acts of his learned friends in the same firm could not, by itself, automatically justify a finding of misconduct before the DC or DB. Therefore, the reliance by the HCJ on s. 12 of the Partnership Act 1961 ('PA') and the case of *Tunku Ismail Tunku Md Jewa & Anor v. Tetuan Hashim Sobri Kadir* was inaccurate, as they were not applicable to the personal culpability of an advocate and solicitor for the purpose of determining the issue of misconduct. (paras 16 & 17)

(2) Whilst s. 12 of the PA referred to the liability of a firm for wrongs, the word 'guilt' was instead employed in s. 94(3) of the Legal Profession Act 1976 ('LPA'), which formed the basis of the findings of the DC and DB. It was undeniable that there was a difference between liability and guilt. In criminal law, guilt required personal culpability, meaning that the accused must be personally blameworthy for the offence. The prosecution had to prove not only that the wrongful act (*actus reus*)

occurred but also that the accused possessed the necessary mental element (*mens rea*). Hence, in relation to the first complaint, the conduct of Ms Khor could not be imputed to the appellant for the purpose of finding him guilty beyond reasonable doubt of professional misconduct. (paras 18, 19 & 22)

(3) The DC's refusal to allow the appellant to call LSL as a key witness constituted a fundamental denial of his right to present a full and complete defence. LSL was central to establishing that the appellant's actions were based on client's instructions and to corroborate his understanding of the winding-up order and the interim stay order, which were the core of the complaints against him. By refusing to allow LSL to testify, the DC prevented a material line of evidence from being considered, thereby rendering the DC proceedings procedurally flawed and unfair. Any court would therefore be compelled to set aside the DC's decision. Consequently, the DC's refusal compromised the integrity of the proceedings and prejudiced the appellant, thereby justifying this court's intervention to allow the appeal. (paras 28-30)

(4) Although the HCJ had correctly identified the applicable legal principles, the application of the 'beyond reasonable doubt' standard in reviewing the disciplinary findings was not given full effect. The appellant's case raised several specific matters which required a direct assessment of whether they injected reasonable doubt into the core allegations. When read in context, the appellant's actions raised a genuine question as to whether he possessed the intention to mislead the court at all, which warranted explicit analysis within the context of the standard of proof beyond reasonable doubt. The HCJ appeared to focus on whether there was an evidential basis for the DC's findings, rather than conducting a stringent examination of whether that evidence was so compelling as to exclude all reasonable doubt. This constituted an appealable error. (paras 31, 33, 36, 38 & 39)

Case(s) referred to:

Datuk M Kayveas & Anor v. Bar Council [2013] 7 CLJ 533 FC ***(foll)***

Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener) [2021] 3 CLJ 677 FC ***(refd)***

Tunku Ismail Tunku Md Jewa & Anor v. Tetuan Hisham Sobri & Kadir [1989] CLJU 36; [1989] 1 LNS 36 HC ***(refd)***

Legislation referred to:

Legal Profession (Practice and Etiquette) Rules 1978, r. 16
Legal Profession Act 1976, s. 94(3)
Partnership Act 1961, s. 12

A *Appellant In Person*
For the 2nd & 3rd respondents – Cyndi Chow Li Kian, Chan Wei Yang & Hang Qiu Min; M/s Josephine, LK Chow & Co
For the 4th respondent - Chong Joo Tian; M/s JT Chong Assocs

[Editor's note: For the High Court judgment, please see Lim Kien Huat v. Ho Shen Lee
B *(M) Sdn Bhd & Ors [2024] CLJU 1674 (overruled).]*

Reported by Syamim Ariffin

JUDGMENT

Evrol Mariette Peters JCA:

C **Introduction**

[1] This appeal ("this appeal") was lodged by the appellant in respect of the decision of the High Court of July 2024 in dismissing the appellant's appeal against the Advocates and Solicitors Disciplinary Board ("DB") order
D of August 2023 ("DB Order") which ordered that the appellant (i) be suspended for six months; and (ii) pay a fine amounting to RM50,000.

The Factual Background

[2] At the material time, the appellant was a practising advocate and solicitor, and a partner in Messrs Lee & Lim ("L & L"). The first respondent
E was a private holding company, with the second respondent serving as its director. The third respondent, the wife of the second respondent, was likewise appointed as a director of the first respondent.

[3] The first respondent had already been wound up, and Crowe Malaysia
F PLT was the appointed liquidator thereof. In order to prevent additional costs from being incurred, the liquidator had elected not to proceed with defending the first respondent in this appeal.

[4] In 2017, internal disputes arose within the first respondent between its directors, Lim Shen Lee, and the second respondent. After being excluded
G from management, Lim Shen Lee, who owned 46% of the shares, filed a winding-up petition in 2018. The first respondent's accounts were frozen, and after a failed bid for a validation order, the second and third respondents transferred assets of the first respondent elsewhere, leading to committal proceedings.

H **[5]** On 11 April 2019, the High Court ordered the winding-up of the first respondent ("winding-up order"), committal of the second and third respondents, and an interim stay ("interim stay order") of the winding-up order. It was crucial to note that the following minutes (*in verbatim*) were documented by the court:

I > Penggulungan syarikat dan dibenarkan RM50,0000 [interim stay allow pending formal application] a week to next 19.4.2019.

[6] The interim stay order was approved only on 30 April 2019, but on 23 April 2019, the appellant's legal assistant, one Ms Khor Chai Hoong ("Ms Khor") emailed the winding-up order to the liquidator without reflecting the interim stay order, which was only formally issued on 30 April. This prompted the first complaint to the DB.

[7] On 18 July 2019, L & L wrote to the Seremban High Court, alleging that the second and third respondents were dissipating the assets of the first respondent, and hence requested an expedited hearing of two pending applications. Despite a clarification letter from the solicitors for the second and third respondents, the appellant reaffirmed these allegations in a follow-up letter dated 26 July 2019 and refused to retract his position. This triggered the second complaint.

[8] The Disciplinary Committee ("DC") found him guilty of both the first and second complaints and recommended a six-month suspension. Upon review, the DB upheld the findings and, in August 2023, imposed a six-month suspension on the appellant and a RM50,000 fine for his conduct.

[9] The appellant lodged an appeal to the High Court which was dismissed. Hence, this appeal.

Issues

[10] The main issues raised by the appellant in this appeal were as follows:

(i) whether there was failure by the learned High Court Judge to appreciate the absence of the appellant's personal culpability in the allegation of misconduct;

(ii) whether there was failure by the learned High Court Judge to address the issue of breach of natural justice during the hearing before the DC; and

(iii) whether there was failure by the learned High Court Judge to appreciate the beyond reasonable doubt standard of proof at the DC proceedings.

[11] This appeal was unanimously allowed for the following reasons.

Contentions, Evaluation, And Findings

Whether There Was Failure To Appreciate Absence Of The Appellant's Personal Culpability

[12] It is undeniable that the foundation of disciplinary responsibility lies in personal culpability. A finding of legal professional misconduct cannot rest merely on the fact that a legal practitioner occupies a position of authority or bears general responsibility for the acts of others. The disciplinary process is not intended to impose vicarious liability, as in civil proceedings, but rather to determine whether the individual legal professional has, by act or omission, fallen below the standards of integrity, competence, or diligence expected of members of the legal profession.

[13] This approach underscores the moral and disciplinary character of legal professional proceedings. Unlike civil liability, which may arise without proof of fault, disciplinary sanctions are inherently personal and reputational, as they put the legal practitioner's integrity in issue. It would therefore be unjust to impose such sanctions without establishing personal culpability. The disciplinary tribunal must determine not only whether misconduct occurred within the firm, but whether the legal practitioner personally bears responsibility for it.

[14] To hold otherwise would blur the line between civil responsibility and professional discipline, punishing individuals not for their own failings but for those of others. The integrity of disciplinary justice demands that liability be anchored in personal fault.

[15] On that note, we found instructive and are bound by the decision of the Federal Court in *Datuk M Kayveas & Anor v. Bar Council* [2013] 7 CLJ 533; [2013] 4 MLJ 60 ("*Datuk M Kayveas*"), wherein Jeffrey Tan FCJ had stated in the following passages:

> As we see it, the law is this. *The professional misconduct of one member does not render other members of the firm liable for disciplinary action in respect of that misconduct, and punitive action could not be taken against a solicitor without personal misconduct* (see *Re; McCaughey and Walsh* [1883] OJ No 192, where Proudfoot J held that: To justify an order to strike a solicitor off the Rolls, there must be personal misconduct; it is not enough to shew that his partner has been guilty of fraudulent conduct from which a constructive liability to pay money may perhaps arise'; *Rowe v. Lindsay* [2001] EWHC Admin 783, where Stanley Burton J, delivering the judgment of the court, held that 'the vicarious liability of a partner for the acts of his partners, referred to in the skeleton, cannot of itself justify a finding of misconduct by a Solicitors' Disciplinary Tribunal').
>
> The tribunal was entitled of course to expect high professional standards from solicitors generally; but *at the end of the day the appellant must be found personally culpable in some respects before he could be convicted as charged. There is a distinction between civil liability as the proprietor of a one-man firm, and professional misconduct*. The chairman appears, from the passage cited above, to have lost sight of this point. His earlier suggestion that 'in a firm 80 partners' all would be responsible is valid of course in terms of civil liability, but it would be absurd to suggest that all 80 partners could be found guilty of professional misconduct. The blurring of this distinction, a theme throughout the proceedings, was never corrected by the prosecutor. (emphasis added)

[16] The appellant, therefore, could only have been found guilty of misconduct if personally culpable. The Federal Court case of *Datuk M Kayveas* distinguishes civil liability (as a firm owner or partner) from professional misconduct (which requires personal fault). While all partners

may share civil liability, it would be unreasonable to hold every partner guilty of misconduct. In our view, the DC and DB erred by confusing these two forms of responsibility. Essentially, the vicarious liability of a partner for the acts of his learned friends in the same firm cannot itself automatically justify a finding of misconduct before the DC/DB.

[17] Therefore, reliance by the learned High Court Judge on s. 12 of the Partnership Act 1961 and the case of *Tunku Ismail Tunku Md Jewa & Anor v. Tetuan Hisham Sobri & Kadir* [1989] CLJU 36; [1989] 1 LNS 36; [1989] 2 MLJ 489 was inaccurate as they were not applicable to the personal culpability of an advocate and solicitor for the purpose of determining the issue of misconduct.

[18] Our view was fortified by the fact that whilst s. 12 of the Partnership Act refers to the liability of firm for wrongs, the word 'guilt', instead, is employed in s. 94(3) of the Legal Profession Act 1976 ("Legal Profession Act") which was the basis of the findings of the DC and DB. Both provisions read:

> Partnership Act 1961
>
> Section 12 – Liability for firm for wrongs
>
> Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, **the firm is liable therefor to the same extent as the partner so acting or omitting to act.**
>
> ***
>
> Legal Profession Act 1976
>
> Section 94 – Power of Disciplinary Board to strike off the Roll, suspend for misconduct, *etc*
>
> (2) Any advocate and solicitor **who has been guilty of any misconduct** shall be liable to one or more of the following penalties or punishments: (a) to be struck off the Roll; (b) to be suspended from practice for any period not exceeding five years; (c) to be ordered to pay a fine not exceeding fifty thousand ringgit; or (d) to be reprimanded or censured.
>
> (emphasis added)

[19] It was undeniable that there is a difference between liability and guilt. In criminal law, guilt requires personal culpability, meaning that the accused must be personally blameworthy for the offence. The prosecution must prove not only that the wrongful act (*actus reus*) occurred but also that the accused had the necessary mental element (*mens rea*) such as intention, knowledge, or recklessness. Without proof of personal fault, a person cannot justly be found guilty. This reflects a fundamental principle of criminal justice, namely, that

punishment should only follow where there is personal blameworthiness. For example, a person cannot be found guilty of theft merely because they were present when another person stole something; guilt attaches only to those personally involved with the required criminal intent.

[20] By contrast, liability, particularly in civil law, does not always depend on personal culpability. A person may be held legally responsible for harm even if they were not personally at fault. This occurs, for instance, in cases of vicarious liability, where an employer may be liable for the acts of an employee, or in strict liability, where fault or intent is irrelevant. Civil liability focuses on who should bear the loss or provide compensation, not on moral blame.

[21] In short, guilt is inseparable from personal culpability, reflecting individual moral and legal fault, whereas civil liability can exist without personal blame, focusing instead on responsibility and redress.

[22] Hence, with regard to the first complaint, in particular, it was our view that Ms Khor's conduct in emailing the winding-up order to the liquidator without reflecting the interim stay order, could not be imputed to the appellant for the purpose of finding him guilty beyond reasonable doubt of professional misconduct.

Whether There Was Failure To Address Breach Of Natural Justice At The DC

[23] The subsequent issue for determination was whether there was breach of natural justice and fair hearing at the DC.

[24] The appellant contended that he was denied a fair hearing and suffered a breach of natural justice as he was not allowed to call his own client, Lim Shen Lee, during the DC proceedings. This could be seen at the DC notes of proceedings dated 15 April 2022.

[25] The appellant contended that Lim Shen Lee was a "substantive witness" whose testimony was vital to his defence, since he, being the appellant's client at the material time, was the source of the instructions for the very actions that led to the disciplinary complaints. His testimony was likely intended to verify that the lawyers at L & L were acting on client instructions, to corroborate the appellant's version of events and their understanding of court orders, and to shift the responsibility for the contentious actions back onto the client himself.

[26] The appellant drew a parallel to established case law, arguing that this denial was a fundamental procedural flaw that manifestly affected the outcome of the case and constituted a clear breach of natural justice, especially given the high "beyond reasonable doubt" standard of proof required in disciplinary proceedings. He asserted that the learned High Court Judge had erred in not recognising this denial as a ground for overturning the DB's decision.

[27] We found merit in the appellant's contention that he was, in fact, denied a fair hearing before the DC.

[28] Breach of natural justice was a compelling ground to overturn the decision of the DB and DC because it struck at the very heart of a fair hearing. In this context, the DC's refusal to allow the appellant to call his own client, Lim Shen Lee, as a key witness constituted a fundamental denial of his right to present a full and complete defence. This witness was central to establishing that the appellant's actions were based on client instructions and to corroborating his understanding of the winding-up and stay orders which were the core of the complaints against him.

[29] By denying the appellant this opportunity, the DC had prevented a material line of evidence from being considered, thereby rendering the DC proceedings procedurally flawed and unfair. Any court, upon review, would be compelled to set aside the DC's decision as the outcome could not be seen as just when a party was unjustly prevented from defending himself properly.

[30] Consequently, we found that the DC's refusal to allow the appellant to call Lim Shen Lee as a material witness compromised the integrity of the proceedings and prejudiced the appellant, thereby justifying this court's intervention to allow this appeal.

Whether There Was Failure To Appreciate The Beyond Reasonable Doubt Standard Of Proof

[31] It is trite law and according to several cases including the Federal Court case of *Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener)* [2021] 3 CLJ 677; [2021] 2 MLJ 399, the standard of proof in establishing professional misconduct is beyond reasonable doubt.

[32] Applying the beyond reasonable doubt standard ensures that only clear, cogent, and compelling evidence can result in punishment. This protects the public interest in maintaining a trustworthy profession while also safeguarding practitioners from wrongful findings based on uncertain or ambiguous proof. The heightened threshold thus strikes the appropriate balance: it ensures that professional misconduct is firmly established before severe disciplinary consequences are imposed, thereby upholding fairness and preserving confidence in the legal system.

[33] While the learned High Court Judge had correctly identified the applicable legal principles, it was our view that the application of the "beyond reasonable doubt" standard in reviewing the disciplinary findings had not been given full effect. The appellant's case raised several specific matters which required a direct assessment of whether they injected reasonable doubt into the core allegations.

[34] For example, on the issue of personal culpability, although the learned High Court Judge had affirmed the principle of a partner's responsibility for firm oversight in civil liability, the judgment did not fully address the context of disciplinary proceedings requiring proof beyond reasonable doubt, where the central inquiry shifts to the individual's personal state of mind.

[35] On the issue of the two letters alleging that the second and third respondents were dissipating or diverting the company's assets, while the court's concerns about such impropriety are recognised, in our view, the circumstances must also be viewed through the lens of the obligation of an advocate and solicitor under r. 16 of the Legal Profession (Practice and Etiquette) Rules 1978 to act "fearlessly" in safeguarding a client's interests. Rule 16 provides that:

> Rule 16 – Advocate and solicitor to uphold interest of client, justice and dignity of profession
>
> An advocate and solicitor shall while acting with all due courtesy to the tribunal before which he is appearing, fearlessly **uphold the interest of his client,** the interest of justice and dignity of the profession without regard to any unpleasant consequences either to himself or to any other person. (emphasis added)

[36] When read in context, the appellant's actions had, in fact, raised a genuine question as to whether he possessed the intention to mislead the court at all, or whether he was, *albeit* forcefully and perhaps imprudently, discharging his professional duty to protect his client from perceived prejudice. We were of the view that such question warranted explicit analysis in the context of the standard of proof beyond a reasonable doubt.

[37] Furthermore, as previously noted, the learned High Court Judge's grounds did not engage with the appellant's contention regarding his inability to call a material witness before the DC. A comprehensive application of the "beyond reasonable doubt" standard would have necessitated a consideration of whether the absence of such potentially exculpatory testimony impacted the robustness of the fact-finding process to a degree that the ultimate findings could safely be made with the required certitude.

[38] Hence, we were of the view that the learned High Court Judge appeared to focus on whether there was evidential basis for the DC's findings, rather than conducting a stringent examination of whether that evidence was so compelling as to exclude all reasonable doubt.

[39] In our view, this constituted an appealable error in the application of the correct legal test, forming the crux of the appellant's grievance before this court.

Conclusion

[40] As such, after conducting a thorough examination of all the evidence presented to this court, encompassing both written and oral arguments from both parties, we found that the appeal should be allowed. The High Court order is hereby set aside.